

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11107 of 2004
with
SPECIAL CIVIL APPLICATION NO.13983 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BHARWAD VELA MEPA

LEGAL HEIR OF BHARWAD MEPA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11107 & 13983 of 2004
MR BD KARIA for Petitioner No. 1-2
Mr.Desai, Asst.GOVERNMENT PLEADER for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 08/12/2004

ORAL JUDGEMENT

As the notices were issued for final disposal both the matters are heard finally and since the facts are more or less common both the petitions are being considered by this common judgment.

2. Heard Mr.Karia for the petitioners and Mr.Desai for respondents.

3. The short facts of the case are that the lands in question were granted by the State Govt to various persons including the father of some of the petitioners who are described in cause title. The said lands were granted as new tenure lands for agricultural purposes. The proceedings were initiated by the Dy.Collector on the ground that the lands remained uncultivated for some period and it was the contention of the petitioners that there was drought and little rain and it was submitted that the land was cultivated for some period. The Dy.Collector proceeded on the basis of village Form 7/12 of the lands concerned and on the report of the Talati-cum-Mantri and ultimately orders were passed for forfeiture of the land in question. The matter were carried before the Collector in appeal under the Bombay Land Revenue Code (hereinafter referred to as "the Code") and during the course of hearing a prayer was also made to regrant the land by recovering token amount of Rs.1/- . The Collector considered the matter. However, he dismissed the appeal. The matter was carried before the State Govt and it is the case of the petitioners that on account of sickness adjournment was asked but the same was not granted and the State Govt heard both the revisions and ultimately dismissed the revisions and under these circumstances the petitioners have approached this court by preferring these petitions.

4. Upon hearing the learned advocates parties, it appears that the questions which arise for consideration by this court in these petitions are as to what was the procedure required by the revenue authority for coming to conclusion that the land has remained uncultivated or not used for agricultural purpose and what was the procedure required to be followed even if the revenue authority had to rely upon the revenue record and/or the panchnama prepared by Talati-cum-Mantri or other officers of the revenue department. There is no dispute on the point that the aforesaid issues are covered by the decision of this court, dated 21.9.04 in SCA Nos 3802/04 with SCA No.3803/04 and another decision dated 26.11.2004 in SCA No.5877/04. In respect to exercise of power for forfeiture of the land in question at part 6 in the

aforesaid decision, dated 21.9.04 in SCA 3802/04 with SCA No.3803/04 it has been observed as under:

"6. Even if the matter is considered on the substance of the subject matter also, the net effect would be that as there was cultivation shown in the revenue record of village Form 7/12 of the land in question, the Prant Officer proceeded on the basis that the land is transferred in breach of conditions since it was a new tenure land, and therefore, the land is ordered to be forfeited. Merely because the show cause notice has been issued and the owner of the land could not represent the case would not be a sufficient ground to hold that the land is transferred to a third party, may be for cultivation. It is well settled that the village Form 7/12 or revenue record is relevant only for fiscal purposes and merely mutation or other aspect of cultivation is recorded in revenue record, no right which otherwise exists in accordance with law gets altered qua the property in question. If there is any authenticated record in the village panchayat or with Talati-cum-Mantri showing those rights are created by the transfer by the holder of the land in favour of some other party it may stand on different footing. It appears that there was no record available for altering the rights, possession and/or ownership of the land in question before the Prant Officer. In the absence of such record, the Prant Officer could not have come to conclusion that the land is transferred in breach of conditions. As regards the orders of the State Govt in revision are concerned, it has proceeded on the basis as if the burden is upon the owner of the land to show that he has not transferred. When a statement is made or it is the case of the petitioner that the land is not transferred and is in possession and ownership of the petitioner, it will be for the authority to consider if there is any authenticated record available for transfer. In the absence of any lawful document for transferring or creating lawful right in the property in question, it could not be even concluded that the property is transferred in breach of conditions. It may be recorded that the person who is alleged to have transferred the land namely Vardhabhai is represented through

respondent Nos 4 and 5, Legal representatives of deceased Vadhahbai Pranolal. Mr.Goswami, Ld.counsel for respondent Nos 4 and 5 also confirms the position that no transfer whatsoever has taken place. It also appears that before the State Govt in the proceedings of revision the affidavit was also filed for such purpose. Further, it appears that the orders are passed by the Prant Officer simply on the basis of noting in Village Form No.7/12 of the land in question showing that the cultivation is by other person and not by petitioner and therefore the land is ordered to be forfeited to State. When it is a matter pertaining to taking away the property of any citizen mere reliance upon revenue record of village Form No.7/12 can not be said as sufficient proof for breach of condition. As such, when such aspect is denied by the holder of the property, it must be examined as to whether concerned Talati-cum-Mantri made such entry on the basis of hearsay or on the basis of so called material which can not be relied upon or on some extraneous consideration and, if yes, then such entry in village Form No.7/12 can not assume value authorising for concluding the breach and consequential forfeiture of the property. There must be cogent, authenticated and lawful material for altering the rights in immovable properties for such breach. Moreover, even if it is established that there is a breach, and if the authority is to take action of forfeiture, then it should also be examined as to whether the breach was due to circumstances beyond the control of the holder of the property and, if yes, then in that case, harsh action of forfeiture of the property would not be required but the authority will have to consider the matter for imposition of fine/penalty considering the gravity of the breach, including the period for such breach. If it is a matter resulting into action of forfeiture of land, then principles of natural justice to its full extent considering the facts and circumstances of the case will be required to be followed. Therefore, only entry in village Form No.7/12 can not be said as sufficient material attracting the power of authority for forfeiture of the land to the State Government. (emphasis supplied) Under the circumstances, it is apparent that the Prant Officer as well as the State Govt have committed apparent jurisdictional error in exercising power

on the basis of the entry in village Form No.7/12 and holding that there is breach of conditions of grant of land and holding that the land deserves to be forfeited to the State Govt."

5. Even in the matter of arriving at the conclusion as to whether the land has remained unutilised for the agricultural purpose or not fully utilised for agricultural purposes during the period of two years under section 65 of the Bombay Tenancy & Agricultural Lands Act, this court in the aforesaid decision in SCA No.5877/04 at para 8 & 9 has observed as under:

"8. On true construction of Section 65 of the Act, it appears that the State Government is clothed with the power to declare that the management of such land shall stand assumed if it appears to the State Government that for any two consecutive years the land has remained uncultivated or full and affective use of the land is not made for the purpose of agriculture, through the default of the holder or any other cause whatsoever, not beyond his control. Further before such declaration, an inquiry is required to be made and thereafter only the declaration can be made for taking management of the land in question or assuming the management of the land. The scope of the inquiry would be as to whether the land has remained uncultivated or whether there is no full or effective use of the land for the purpose of agriculture, but while holding the inquiry it is also obligatory on the part of the authority to inquire and to arrive at an finding as to whether such non-cultivation or non-use of the land to the fullest extent is for the reason beyond the control of the holder of the land or not. Therefore, merely because there is non-cultivation of the land for two consecutive years or merely because there is no full and effective utilization of the land for agricultural purpose for a period of two years, itself is not sufficient for assuming the management of the land, but power may be exercised by the State Government only if it finds that such has happened because of voluntary action or in action on the part of the holder of

the land but not on the ground or cause beyond the control of the holder of the land.(emphasis supplied).

Further, for the scope and ambit of the inquiry under Section 65 of the Act, this Court in the case of "Sanjaybhai Induprasad Bhatt v. State of Gujarat", reported in 2000(3) GLH, 768 has held at para 9, inter alia, as under:

"19. ... The question is that inquiry which has been contemplated under the provisions of Section 65 it has to be understood in light of the principles of the natural justice. Inquiry cannot be considered as formal or merely empty formality for arriving at a particular conclusion. While exercising the powers of the State Government by the Deputy Collector, he should have hold proper inquiry because while exercising the powers under Section 65, especially when the Deputy Collector is deciding the right of the petitioner or to decide or adjudicate the question whether the land in question has remained without cultivation or not. That determination of this issue, the Deputy Collector has to consider various aspects keeping in mind the relevant provisions of Section 65 of the Act. It is noted that Section 65 clearly provides that if the land in question remains uncultivated on the ground that it is beyond the control of the petitioner or the land holder, it cannot be considered to be a ground for initiating the inquiry and to passe the order under Section 65. So these are the reasons which were required to be kept in mind while exercising the powers under Section 65 of the Act. The inquiry initiated against the land holders who are the owners of the land and result of the inquiry is to deprive the person from the land in question because the land vested with the Government. Therefore, when any inquiry if it is ultimately likely to result into deprivation of livelihood of the person/s then it is the responsibility of the authority to give just, proper, adequate and reasonable effective opportunity to the persons against who the inquiry has been initiated by the Deputy Collector. Inquiry which is suggested under Section 65, it is not exparte inquiry but it requires to give opportunity to the persons who

is the holder of the land in question. If there no provision is made under the statute about inclusion of principles of natural justice even then the same has to be read impliedly and during the course of inquiry under the relevant provisions, principles of natural justice should be followed in initiating such proceedings."

9. Not only that but even in respect to the report prepared by RTS Team vis-a-vis the observance of the principles of natural justice, it has been observed by this Court in the said decision at para 17, inter alia, as under:

"17. ... The land holder in absence of report of the RTS team and the material and documents on which the reliance was placed, and the Deputy Collector wanted to have answer or explanation of show cause notice from the land holder. Thus it is a clear violation of principles of natural justice because how the land holder can defend or give explanation of the show cause notice effectively in absence of the report of the RTS team along with material and documents which have been collected by the RTS team behind the back of land holder. Therefore, if any reply or explanation even if it is tendered by the land holder, that cannot be considered to be an effective and reasonable opportunity has been given by the Deputy Collector. That one another important aspect which requires to be noted here is that after reasonable reply from the land holder, the Deputy Collector had fixed the matter for hearing and calling the land holder to remain personally present in such inquiry and at that time merely right of representation has been given to the land holder but even at that occasion also, a copy of the report prepared by RTS team along with documents and material were not supplied to the land holder. Not only that but even during the course of inquiry, the Deputy Collector has not examined any persons either Talati cum Mantri or Mamlatdar to prove the report and materials as well as the documents which were collected by the RTS team in inquiry. No right of cross examination has been given to the land holder and merely right of oral representation has been given to the land holder during the course of inquiry and therefore, the Deputy Collector has decided the matter after relying the report which has been prepared by RTS

team along with the material and document which were annexed with the report and considering the oral representation of the land holder come to the conclusion that Section 65 has been violated. Such procedure to my mind is totally contrary to the principles of natural justice inasmuch as the decision arrived by the Deputy Collector to deprive the persons of their respective lands in question which are livelihood of the land holder, therefore, the right to life and right to livelihood are required to be protected before passing any adverse orders and reasonable, proper effective opportunity is minimum barest requirements of principles of natural justice. The said procedure apparently unreasonable and contrary to the safeguard which has been provided under the principles of natural justice. ..."

6. A perusal of the impugned order shows that neither the revenue authority has followed the procedure of giving opportunity of hearing to the concerned person by observing principles of natural justice before relying upon the revenue record of village Form 7/12 and/or the report of the Talati-cum-Mantri nor it has been considered as to whether the land was not cultivated due to circumstances beyond the holder of the land or not. As per the view taken by this court in the decision rendered in SCA 5877/04 read with the decision in SCA No.3802/04 if it is found that the land was not used for agricultural purpose because of voluntary action or inaction on the part of the holder of the land, then only such power for resumption or forfeiture of the land is permissible. There is no examination on the said aspect by the revenue authority in the impugned order and even in the appeals before the Collector as well as in the revision before the State Govt the said aspect is not considered. Under the above circumstances, the orders passed by the Dy. Collector and confirmation thereof by the Collector in appeals and further confirmation by the State Govt in the revision can not be sustained in the eye of law and the said impugned orders deserve to be quashed and set aside and hence they are quashed and set aside.

It is further observed that it would be open to the Dy. Collector to issue a fresh show cause notice and after giving opportunity of hearing and after considering the case for the concerned land, in light of the observations made by this court hereinabove and to decide the matter in accordance with law.

7. Both the petitions are allowed to the aforesaid extent and rule in each petition is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

8.12.2004 (JAYANT PATEL, J)